

TITLE 14. Fish and Game Commission

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 7071, 7075, 7078, 7083 and 7088 of the Fish and Game Code and to implement, interpret or make specific sections 2362, 7070, 7071, 7075, 7078, 7082, 7083, 7086, 7087, 7088, 8383, 8383.5 and 8623 of said Code, proposes to add sections 50.00, 50.01, 50.02 and 50.03 to new Article 1 and sections 51.00, 51.01, 51.02, 51.04 and 51.05 to new Article 2 of new Chapter 5.5, Division 1, add sections 155.01, 155.1 and 155.10 and amend Section 109, Title 14, California Code of Regulations, and make inoperative sections 8383 and 8383.5, Fish and Game Code, relating to the Fishery Management Plans (FMP), Generally, FMP Definitions, Purpose and Scope of the Plan, Actions Requiring Plan Amendment, Framework Review Processes, White Seabass Fishery Management Plan (Plan) Purpose and Scope, Definitions, Process and Timing, Allocation Factors, Harvest Control Rules (Optimum Yield Options), Adoption of White Seabass Commercial Laws Including Size Limit, Closed Season, Use of Purse Seine and Round Haul Nets, Delivery of White Seabass from Mexico, Gill Nets Used to Take White Seabass and Incidental Take of Thresher and Shortfin Mako Shark in White Seabass Drift Net.

Informative Digest/Policy Statement Overview

Under existing law, the Fish and Game Commission (Commission) is authorized to regulate commercial and recreational fisheries for white seabass (Fish and Game Code Sections 200, 205, and 7071). The Marine Life Management Act of 1998 (MLMA) directs that fisheries be managed pursuant to fishery management plans and that a White Seabass Fishery Management Plan (White Seabass FMP or plan) that was developed and approved by the Commission in 1996 remain in effect until amended to conform with the MLMA. The MLMA further directs that the White Seabass FMP be amended on or before January 1, 2002, and that the Commission adopt implementing regulations not later than 60 days after the plan amendments are adopted by the Commission. The MLMA authorizes the Commission to regulate fisheries for white seabass and to make Fish and Game Code Statutes for white seabass inoperative.

Existing white seabass laws and regulations protect subadult and young adult white seabass through a 28-inch minimum size limit, a 3-fish daily bag and possession limit, commercial gear (net) restrictions (prohibition on use of round haul and minimum mesh size for gill and trammel nets), and an annual spring season closure (March 15 through June 15) to protect adult spawning white seabass with a provision authorizing the take of one legal size white seabass during the spawning season closure by sportfishing and one legal size white seabass if taken incidental to fishing with gill or trammel nets. Existing regulatory measures for white seabass have been adopted or adjusted (amended) during recent decades toward the goal of rebuilding white seabass stocks off California.

The proposed regulations would add new Chapter 5.5 dedicated to regulations

implementing fishery management adopted pursuant to the MLMA. New Articles 1 and 2, of Chapter 5.5 would contain regulations that apply to Fishery management plans in general (Article 1) and the White Seabass FMP in particular (Article 2). Several new Title 14 sections (50.00, 50.01, 51.02, 50.03, 51.00, 51.01, 51.02, 51.04, 51.05, 155.01, 155.1, and 155.10) are proposed to be added to, or amended (109) in Title 14, CCR. Fish and Game Code Section 8383 (the closed commercial white seabass season that was adopted in June 2000 as Section 155, Title 14, CCR) and Section 8383.5 (commercial white seabass minimum size limit) are proposed to be made inoperative in the Fish and Game Code. The proposed new regulations specify definitions that apply to management involving fishery management plans in general and the white seabass fishery specifically. Also, regulations describe the purpose and scope of the White Seabass FMP, where recreational and commercial regulations are located in Title 14, and the process and timing of white seabass monitoring. Proposed regulations authorize the director to appoint a White Seabass Scientific and Constituent Advisory Panel (WSSCAP), describes general criteria for membership on the WSSCAP, describes the general timing and processes for developing, considering, and adopting regulatory changes associated with white seabass fishery management, plan amendment, determination of harvest guidelines, including optimum yields, and considerations that guide white seabass allocation.

More specifically, the proposed regulations would:

- 1) Add Section 50.00 to Article 1 of new Chapter 5.5 describing the location of regulations applicable to sport fishing, commercial fishing, and a fishery management plan for a species or species group.
- 2) Add Section 50.01 containing 24 definitions that apply generally to fishery management plans and related fisheries management measures (unless defined otherwise in regulations specific to a fishery management plan), and specifies that definitions found in Chapter 1 of Title 14, CCR, and Chapters 1 and 2 of Division 0.5 of the Fish and Game Code will apply to FMP's where not in conflict with definitions found in an FMP.
- 3) Add Section 50.02 describing changes in management measures and actions that trigger the need for amendment of an FMP.
- 4) Add Section 50.03 describing three processes for taking management action to implement routine annual changes in management that range from a "prescribed action" involving no public notice where regulatory guidelines are first adopted by the Commission, to a "full rulemaking action" involving at least three Commission meetings to hear, consider, and approve measures.
- 5) Add Section 51.00 to Article 2 of new Chapter 5.5 describing the purpose and scope of the White Seabass FMP, the location in Title 14 of white seabass sport and commercial fishing provisions, and specifies that where white seabass weight is given for white seabass, the weight is in pounds round weight or round-weight equivalent.
- 6) Add Section 51.01 with definitions for *Fishing year*, *overfished stock*, *points of concern*, *points of concern process*, *socio-economic benefits*, *white seabass*, *white seabass fishery*, and *White Seabass Fishery Management Plan*, that are specific to the White Seabass FMP.
- 7) Add Section 51.02 that directs that white seabass management is to conform to the goals, objectives, criteria, and procedures of the White Seabass FMP, specifies that monitoring of fishing is done annually, authorizes the Director to appoint a White

Seabass Scientific and Constituent Advisory Panel (WSSCAP), directs that regulations remain in force until amended or repealed by the Commission, and sets a general time line for annual development and adoption of specifications and management measures.

8) Add Section 51.04 which directs that white seabass fishery allocations be based on a ratio specified in the plan, describes factors to consider during a change in allocation of white seabass, and provides that modification of a direct allocation to a fishery may be "a routine management measure where criteria are adopted in regulation.

9) Adds Section 51.05 describing four possible options, and three suboptions, for harvest control rules with all but one option involving the determination of an optimum yield for the fisheries.

10) Adds Section 155.01 that adopts as a regulation the current 28-inch commercial minimum size limit for white seabass that presently is contained in Fish and Game Code Section 8383.5, and make Section 8383.5 inoperative.

11) Adds Section 155.1 that adopts as regulation current restrictions of Fish and Game Code Sections 2362 and 8623, on the use of purse seine and other round haul nets off California, and adopts the language of Section 109, Title 14, CCR as Subsection (d) of proposed Section 155.1 regarding requirements for delivery, inspection, and clearance of white seabass on a vessel carrying a purse seine or other round haul net.

12) Adds Section 155.10 that adopts as regulations current requirements of Fish and Game Code Sections 8623 and 8576 governing vessels landing white seabass with gill nets, including minimum mesh size, incidental take of white seabass during the season closure, and the incidental take of thresher and shortfin mako shark in drift gill nets when fishing for white seabass.

13) Remove reference to white seabass from Section 109 to avoid duplication with proposed new Section 155.1(subsection d).

14) Makes inoperative Fish and Game Code Sections 8383 and 8383.5 because they will now appear in regulations of Title 14, CCR.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Hubbs-Sea World Research Institute, Shedd Auditorium, 2595 Ingraham Street, San Diego on Thursday, October 4, 2001, at 10:00 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the City Council Chambers, 333 W. Ocean Boulevard, Long Beach, on Friday, December 7, 2001, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments may be submitted on or before November 30, 2001, at the address given below, or by fax at (916) 653-5040, or by e-mail to jduffy@dfg.ca.gov, but must be received no later than December 7, 2001 at the hearing in Long Beach. E-mail comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based, are on file and available for public review from the agency contact person, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Tracy L. Reed at the

preceding phone number. Don Schultze, (916) 227-5670, Department of Fish and Game, has been designated to respond to questions on the substance of the proposed regulations. Copies of the statement of reasons, including the regulatory language, may be obtained from the above address.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

No changes are being proposed at this time in season, size, bag, and gear provisions in conjunction with adoption of White Seabass FMP implementing regulations. Therefore, there are no expected economic impacts associated with adoption of those provisions as regulations.

Some options for harvest guidelines now included in the White Seabass FMP would allocate white seabass to the sport and commercial fisheries in different proportions (proposed Section 51.05), and would set MSY/OY proxies that define an upper limit for catches of white seabass (proposed Section 51.05). Some of these options, if selected by the Commission, are expected to have economic effects that vary based on the degree to which they constrain fishing for white seabass.

For purposes of evaluating potential economic impacts to white seabass recreational and commercial fisheries a hypothetical allocation ratio, that might be expected to be applied in the white seabass fisheries, was determined by averaging the total annual catch for the period 1983 through 1989 and 1993 through 1999 from the Marine recreational Fisheries Statistics (MRFSS) data set (follows the same process used by the Commission during adoption of recent

interim nearshore fisheries regulations). This results in an allocation ratio of 55 percent of an OY to the recreational fishery and 45 percent to the commercial fishery. Therefore, if an annual OY for white seabass is set at 1,000,000 pounds of white seabass for a fishing year, the recreational fishery would be authorized to take 550,000 pounds of white seabass and the commercial fishery would be authorized to take 450,000 pounds of white seabass.

The options provided in the plan for setting optimum yields (proxy OYs) differ in their potential impacts on fisheries sectors as follows:

Option A: Selection of this option (status quo regulations) would result in no maximum sustainable yield (MSY) or optimum yield (OY) being set for the fisheries and should, therefore, have no fiscal effect on the white seabass fisheries.

Option B: Under this option a maximum sustainable yield (MSY) proxy of 1.6 million pounds was proposed which when allocated in the ratio indicated above would result in an authorized annual harvest of 880,000 pounds to the recreational fishery and 720,000 pounds to the commercial fishery. Because these allocations are well above the recent catch levels for the fisheries no adverse economic impact to fisheries is expected to result from this option.

OY Option C: The selection of any of the three sub-options under Option C would result in fewer pounds of white seabass being authorized for commercial harvest than under Options A, B, and D. This is expected to result in an adverse economic impact, primarily on the approximately 20 commercial white seabass vessels that land 80 percent of the catch. The different OYs under Option C would have a range of potential impacts, from the least impacting Suboption 1 to Suboption 3 which would have the greatest effect on catch. The pounds of fish authorized for take under Suboption 1 is based on a 5-year (1996-2000) average of annual recreational and commercial landings (pounds) of white seabass, and Suboptions 2 and 3 are based on a 10-year (1988-89 and 1993-2000), and 15-year (1983-89 and 1993-2000) average of catches, respectively. Optimum yields in each of Suboptions 1, 2, and 3 are allocated in the ratio of 55 percent recreational and 45 percent commercial.

Commercial Impacts of Suboptions 1, 2, and 3: A total of 152,830, 111,432, and 95,820 pounds of white seabass would be allocated to the commercial fisheries under Suboptions 1, 2, and 3, respectively, (see Table 2-1 in the attached White Seabass FMP). Only in the case of Suboption 1 are the pounds of white seabass allocated to commercial fisheries (152,830 pounds) greater than the 130,900 pound average annual commercial catch of white seabass for the past 10 years. Therefore, under Suboption 1, if commercial landings continued at the average of the past 10 years, no potential economic impact to the commercial white seabass fisheries would be expected.

However, the OY under Suboption 1 is approximately 71,000 pounds less than the two-year average for 1999 and 2000 (229,400 pounds), the last two years

for which complete landing records are available. This suggests that the Suboptions under Option C are likely to have some adverse economic impact of uncertain proportions on the commercial fishing sector if landings continue at their recent rate.

Economic impacts to commercial fishermen will vary from fisherman to fisherman depending on how dependent the commercial operation is on white seabass. Typically fishermen that target white seabass operate from small to medium size vessels and are involved in more than one commercial fishery during the year due to the seasonal availability of white seabass off California. Therefore, these fishermen may employ strategies which lessen reliance on the harvesting of just one species. Those that rely most heavily on white seabass are expected to be impacted the most. Given these considerations, the greatest impact of the various options would be under Suboption 3.

The authorized commercial allocation under Suboption 3 is 95,820 pounds, which is approximately 35,000 pounds less than the prior 10-year average of 130,900 pounds of commercial white seabass, and more than 130,000 pounds less than the recent 2-year (1999-2000) average of about 229,000 pounds of white seabass.

$[(130,900 \text{ pounds} - 95,820 \text{ pounds} = 35,080 \text{ pounds}) \text{ and } (229,000 \text{ pounds} - 95,820 \text{ pounds} = 133,180 \text{ pounds})]$

The value of between 35,000 and 130,000 pounds of white seabass (the estimated range of the decline in harvest under Suboptions 1, 2, and 3) based on the approximately \$2.00 per pound exvessel price paid for white seabass during the past 10 years, is about \$70,000 to \$260,000. About 20 of the approximately 141 vessels landing white seabass in recent years take about 80 percent of the commercial white seabass using hook-and-line gear and set and drift gill nets. These vessels are potentially the most economically impacted by the OYs. Therefore, assuming that the operators of each of these 20 vessels would share equally in the loss of 80 percent of the \$70,000 to \$260,000, the expected loss in revenue for each vessel operator could range from \$2,800 to \$10,400.

$[(\$70,000 \times .80 = \$56,000 \text{ divided by } 20 \text{ vessels} = \$2,800/\text{vessel}) \text{ and } (\$260,000 \times .80 = \$208,000 \text{ divided by } 20 \text{ vessels} = \$10,400 \text{ per vessel})]$.

The foregoing analysis assumes that these commercial operators do nothing to adjust their commercial fishing, or other business ventures to compensate for reduced white seabass landings, which is an unlikely scenario. Most fishermen today participate in more than one fishery targeting more than one species. Therefore, the degree to which the more successful white seabass fishermen could adjust fishing practices to compensate for reduced take of white seabass may depend on other fisheries they participate in, or qualify for.

The impacts of these options, if selected as harvest guidelines, might not be long term. If white seabass stocks continue to increase as stocks benefit from

favorable environmental conditions and the effects of management, harvest guidelines should also increase toward Option B's MSY proxy of 1.6 million pounds that is thought to represent sustainable harvests at higher population levels than today.

Recreational Impacts of Suboptions 1, 2, and 3: Under Suboptions 1, 2, and 3, 186,792 pounds, 136,194 pounds, and 117,113 pounds, respectively, of white seabass would be allocated to the recreational fishery. The catches authorized under these three Suboptions is about 11,500 pounds, 62,000 pounds, and 81,000 pounds, respectively, less than the average annual recreational catches of 198,300 pounds of white seabass for the past 10 years.

If just the average annual recreational catch for 1999 and 2000 are considered, the OYs authorized under the three Suboptions are about 389,000, 440,000, and 459,000 pounds less than the estimated 575,785 pound annual average recreational landings of white seabass for these recent years. Therefore, this option has the potential to result in an economic impact to those primarily involved with the commercial aspects of recreational fisheries off southern California (commercial passenger fishing vessel or CPFV businesses) where most sport fishing for white seabass occurs.

Example for Suboption 1: [(198,300 pounds - 186,792 pounds = 11,500 pounds) and (575,785 pounds - 186,792 pounds = 389,000 pounds)]

The potential economic impacts associated with restrictions on the recreational harvest of white seabass under Option C are difficult to estimate. As is the case for the commercial fisheries, several factors may influence whether economic impacts are realized by recreational fishing interests. White seabass are highly prized game fishes that attract both the experienced and novice angler. However, anglers, divers, and the CPFV businesses which would be expected to experience the greatest economic impact in the recreational fishing sector, all have alternatives to fishing for white seabass available to them. White seabass are migratory game fishes that typically become more available during the spring and summer months when several other popular fishes also become increasingly available off of southern California, including yellowtail, California barracuda, Pacific bonito, mackerel, California halibut, kelp bass, barred sand bass, and occasionally tuna and dolphinfish. Whether anglers and divers would forego fishing aboard a CPFV if they cannot take white seabass once the OY is reached is uncertain. Also, economic impacts might be reduced by adopting other than a total closure to fishing for white seabass, such as eliminating the take of one fish during the closed season, or establishing a larger minimum size limit to reduce total catch (discussed in the White Seabass FMP).

Option D: Option D also would provide for a harvest guideline (optimum yield) of 855,000 pounds that represents a slight reduction in take by the sport and commercial fisheries under current harvest levels in the fisheries. However the potential impacts on the fisheries span the range between Option A and Option C discussed above.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State agencies or Costs/Savings in Federal funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

John M. Duffy
Assistant Executive Director

Date: September 18, 2001

